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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 BRYAN TRUNIK,

15 Defendant.
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Case No. 6:20-po-00469-HBK-1

Case No. 6:20-po-00754-HBK-1

ORDER GRANTING DEFENDANT'S
MOTIONS TO RAISE NECESSITY
DEFENSE AT TRIAL

(Doc. Nos. 13, 10)

17 On June 1, 2021, Defendant moved to permit a necessity defense at trial in Case Nos.
18 6:20-po-469 (Doc. No. 13) and 6:20-po-754 (Doc. No. 10). On June 21, 2020, Defendant was
19 issued Violation Notice 9293278 for entering Yosemite National Park without a permit in
20 violation of 36 CFR 1.6(g)(1) (Case No. 6:20-po-469) and Violation Notice 9293675 (Case No.
21 6:20-po-754) for engaging a permitted activity in violation of 36 CFR 1.6(g)(1). While admitting
22 he exceeded the time limit in which to exit the Park and camped in Yosemite's Upper Pines
23 Campground without a permit, Defendant contends he did so out of necessity to recover from
24 heat exhaustion. (*See generally* Doc. Nos. 13, 10). The United States has not opposed or
25 otherwise responded to Defendant's motion in either case. (*See* docket).

26 A defendant's violation can be excused if it was committed "to prevent an imminent harm
27 which no available options could similarly prevent." *United States v. Arellano-Rivera*, 244 F.3d
28 1119, 1125 (9th Cir. 2001). The Court "may preclude a necessity defense by granting a motion in

1 *limine.*” *United States v. Aguilar*, 883 F.2d 662, 692 (9th Cir. 1989); *United States v. Wrenn*, 9 F.
2 App'x 620, 620 (9th Cir. 2001). When the government moves to preclude a necessity defense, the
3 defendant then must demonstrate “(1) that he was faced with a choice of evils and chose the lesser
4 evil; (2) that he acted to prevent imminent harm; (3) that he reasonably anticipated a causal
5 relation between his conduct and the harm to be avoided; and (4) that there were no other legal
6 alternatives to violating the law.” *United States v. Carter*, 5 F.3d 541 (9th Cir. 1993).

7 The United States has not moved to bar Defendant from presenting a necessity defense
8 nor objected to Defendant’s motions. (*See* docket). This is understandable given these cases will
9 proceed to a bench trial. Motions *in limine*, whose purpose is to keep inadmissible evidence from
10 reaching a jury, are “moot” and “generally superfluous” in bench trials. *United States v.*
11 *Heller*, 551 F.3d 1108, 1111-12 (9th Cir. 2009). The Court will thus permit Defendant to advance
12 a necessity defense at trial in the connection with the above Violation Notices. The Court
13 allowing Defendant to present a necessity defense is not an assessment of the defense’s merits.

14 Accordingly, it is **ORDERED**:

15 1. Defendant’s motion to permit a necessity defense at trial in (Case Nos. 6:20-po-
16 469 (Doc. No. 13) is GRANTED.

17 2. Defendant’s motion to permit a necessity defense at trial in (Case Nos. 6:20-po-
18 754 (Doc. No. 10) is GRANTED

19 3. The Court schedules these matters for a Trial Confirmation Hearing for **August**
20 **31, 2021 at 3:00 P.M.**

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22 Dated: July 16, 2021

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24 HELENA M. BARCH-KUCHTA
25 UNITED STATES MAGISTRATE JUDGE
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